



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

May 6, 1939

Hon. Loyd R. Kennedy  
County Attorney  
Cochran County  
Morton, Texas

Dear Sir:

Opinion No. 9-742  
Re: Official ballot for the special election of county commissioner b.....

Your request for an opinion on the following question

"What name or names should the official ballot for a special election of county commissioners, contain, when the only nominee is that of the Democratic party, and where in the general election the voter wrote the name of one who was not a nominee of any party, on the ballot which person received a majority of the votes cast at said general election, the general election having subsequently been held void by the District Court?"

has been received by this department.

From article 2978 of Vernon's Annotated Civil Statutes we quote as follows:

"At the top of the official ballot shall be printed in large letters the words, 'Official Ballot'. It shall contain a printed name of all candidates whose nominations for any elective office have been duly made and properly

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certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this title. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. \* \* \*

In addition to the facts heretofore stated, you state that the Democratic Nominee was duly certified by the Democratic Committee. It is our opinion his name should be printed on the ballot.

It is our opinion further, that the person whose name was written into the ballot on the general election, and who received a majority of the votes cast, should not have his name printed on the ballot. This person was not nominated as a party nominee or a non-partisan or independent candidate, in fact, he was not nominated at all. In *Bounds v. McCallum*, 32 SW (2d) 1047, the court holds:

"That candidates of political parties without state organization, nominated for offices for which statute does not authorize such party to make nomination, are not entitled to have their names printed on official general election ballot."

The election about to be held is a general election for the purpose of electing a commissioner. This person, whose name was written into the ballot in the general election, is not only not a candidate of any political party without state organization, he is not a candidate of

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any party. Nor has he complied with the statutes relating to non-partisan or independent candidates entitling him to have his name on the ballot in that capacity, according to the facts submitted to us. Such party is, therefore, not entitled to have his name printed on the ballot in the special election.

It is our opinion that under the facts as you have given them to us, the Democratic Nominee, and he alone, is entitled to have his name printed on the ballot.

We trust that this answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Fred C. Chandler*  
Fred C. Chandler  
Assistant

FOC:emb

APPROVED:

*Gerard B. Thoma*  
ATTORNEY GENERAL OF TEXAS

